IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/11/2002

CORAM

The Hon'ble Mr.Justice P.K.MISRA

Writ Petition No.892 of 1998

P.Pragatheswari. .. Petitioner

-Vs-

1.The Government of Tamilnadu
rep. by the Secretary,
Commercial Taxes & Religious
Endowment Dept.,
Fort St.George,
Chennai-9.

2.The District Collector,
Dindigul District.

3.The Special Tahsildar
(Land Acquisition),
Palani. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus and as stated therein.

!For Petitioner -- Mr.KR.Thiagarajan.

^For Respondents -- Mrs.N.G.Kalaiselvi,
Spl.Govt. Pleader

:O R D E R

Heard the counsel appearing for the parties on either side.

2. In this writ petition the petitioner had challenged the acquisition of her land. The petitioner had purchased the disputed property by a registered sale deed on 13.03.1989. Notification under section 4(1) of the Land Acquisition Act, hereinafter called as the Act, was published in two Tamil Newspapers in "Madurai Mani" and "Kinnaz". It is the specific case of the petitioner that these two news papers do not have any circulation in the area where the land was situated. Further the case of the petitioner is that no notice under Section 5-A of the Act was served on the petitioner. The third contention is to the effect that on the disputed land the coconut tope exists and as such as

per the instructions from the Government, the land should not have been acquired.
3. So far as the publication in the newspaper is concerned, the only assertion made in paragraph 13 of the counter affidavit is to the following effect. "Both the Tamil Dailies are popularly circulated in the Town." Hence, the contention of the petitioner deserves no consequence.
4. In RAMIAH MOOPANAR Vs. STATE OF TAMIL NADU (2000-I M.L.J. 385) while considering the question of circulation of "Kinnas" which has been published in Nagarcoil in respect of the land in Tenkasi taluk, Tirunelveli taluk, it was observed as follows:
"According to the petitioner, 'Kumari Murasu' and 'Kinnas' both being published from Nagercoil and absolutely there is no evidence for circulation in the local area. In the counter affidavit, the first respondent has merely stated that the published copies of notification were published in the locality, namely, Piranoor village on 14.10.1992 . The same cannot be termed as sufficient compliance in terms of Section 4(1) of the Act. When the petitioner asserts that both the dailies have no circulation at all in their local area, it is but proper for the respondents to inform and file a proof regarding the circulation of these dailies in the said local area. Publication of copies of newspapers in the locality is not sufficient compliance of sec.4(1) of the Act. Accordingly, I accept the second contention raised by the learned counsel for the petitioner. I have already stated that the respondents failed to serve a notice in Form 3-A and in such a circumstance, in the absence of any proof regarding the circulation of these dailies in the local area, it is a handicap for the petitioner to raise any objection regarding the proposed acquisition of his land in the enquiry under Sec.5-A. On this ground also, the acquisition proceeding is liable to be quashed."

5. In the present case, the assertion of the respondents, as already been extracted above, merely stating that the two dailies had popularly circulated in the town is not sufficient to hold that the requirement regarding publication in newspaper having wide circulation in the locality has been made. As observed by Justice P.SATHASIVAM, J., in the aforesaid decision such lacuna alone is sufficient to quash the land acquisition proceedings.
6. The second contention raised by the learned counsel for the petitioner is also acceptable. It has been pointed by the petitioner that no notice has been served on the petitioner. In the counter affidavit it has been stated that the fact that the petitioner had purchased the property was not known and as such notice was sought to be served on the recorded owner,from whom the property had been purchased. In the counter affidavit it has also been asserted that since the property still continued in the name of Farook Nainar and Asrab Nainar and the petitioner's name has not been recorded in the official records and the contention regarding absence of personal notice cannot be accepted.
7. So far as the recorded owners are concerned, the assertion in the counter affidavit regarding the service of notice is to the following effect.
"As the registered owners are not residing at Palani, the 5A enquiry Notices were served by affixing of the same in the conspicuous place of the above said lands on 02.09.1996."

8. The provision regarding service of notice is contained in Section 45 of the Act. After referring to section 45 of the Act in the decision reported in RAMIAH MOOPANAR Vs. STATE OF TAMIL NADU (2000-I M.L.J. 385), it was observed as follows:

"It is clear that as per Sub-Sec.(2) of Sec.45 of the Act, all notices shall be served on the person concerned. When such person cannot be found, it is open to the authorities to effect service on any adult male member of his family residing with him and if such adult male member is not found, the notice may be served by fixing a copy on the outer door of the house in which the person ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the Land Acquisition Officer or of the Collector or in the court-house. In addition to the above mode of service, the officer is expected to affix a copy in some conspicuous part of the land to be acquired. There is no explanation either in the counter affidavit or in the records regarding compliance of such course as mentioned in Sub-Sec.(3) of Sec.45 of the Act. After holding that the land owner/petitioner herein was not in the village, no effort has been taken by the officer to serve a copy on the adult male member or affix a copy on the outer door of the house in which the petitioner resides in the village. Affixing a copy in some conspicuous part of the land to be acquired is in addition to the affixture in the dwelling house or serving on the adult male member. Even otherwise, as per proviso to Sub-Sec.(3) of Sec.45, the officer could have sent the notice by post in a letter addressed to the petitioner at his last known residence, address or place of business and registered under Secs.28 and 29 of the Indian Post Office Act, 1898. Such recourses has not been followed by the respondents."

9. Learned counsel appearing for the respondents submitted that the aforesaid decision was with respect to the original owner, on whom notice had not been served with respect to the provisions contained in the Act, but in the present case, the grievance placed not by the original owner but by the purchaser. This contention of the learned counsel for the respondents though prima facie attractive, cannot be countenanced in view of the decision of K.GOVINDARAJAN,J. Dated 25.07.2000 in (B.NAGARATHINAM Vs. THE DISTRICT COLLECTOR, MADURAI DISTRICT and ANR.) W.P.No.2033 of 1998. In the said case the question was raised by the purchaser of the property, whose name had not been recorded in the revenue records. It was observed in the said case that the service of notice on the previous recorded owner was not found to be sufficient and even if the purchaser's name had not been recorded, the land acquisition proceedings was found to be defective in the writ petition filed by the purchaser.

10. During the course of the arguments in the present case the learned Special Government Pleader submitted that the records reveal that the notice was served on the servant of the previous recorded owners as the recorded owners were away at a different place. Section 4 5 of the Act contemplates service of notice on a adult male member of the family and service of notice on the servant even if it is correct (there is some dispute about this aspect as it has not been specifically stated so in the counter) cannot be said to be sufficient as contemplated under Section 45 of the Act. When property is sought to be acquired, the procedural requirement as indicated in the statute must be strictly complied with. For the aforesaid reason also the land

acquisition proceedings must be held to be invalid.
11. Learned counsel for the petitioner also contended that the acquired land was a tope and the same should not have been acquired as per the government instructions. There is some dispute as to whether the acquired land was a tope or not. Since I have already found that the land acquisition proceedings was defective, it is unnecessary to deal with this question.
12. For the aforesaid reasons, the writ petition is allowed and the declaration made under Section 6 of the acquisition proceedings is quashed. No costs. Consequently, W.M.P.No.1311 of 1998 is closed.

27-11-2002
Index-Yes.
Internet-Yes.

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To
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